CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 196.

WILLIAM F. KESSLER

vs.

GEORGE S. ELDRED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED FEBRUARY 2, 1906.

(20,076.)

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INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the seventh circuit	1	1
Statement of facts	1	1
Questions certified	2	2
Judges' certificate	3	2

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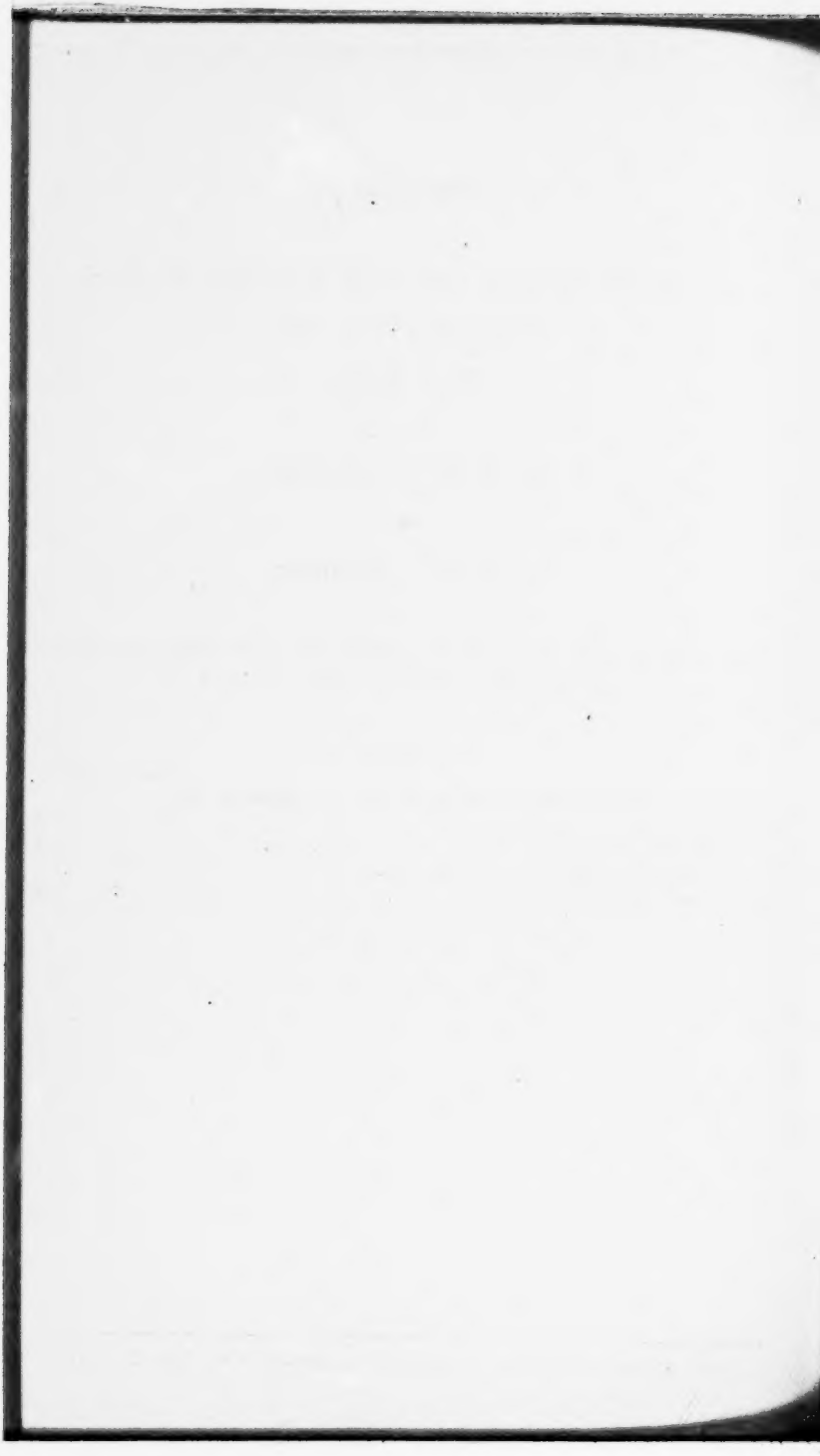

1 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905, October Session, 1905.

No. 1181.

WILLIAM F. KESSLER, Appellant,
vs.
GEORGE S. ELDRED, Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In this case, duly argued and submitted to this court, there arise questions of law concerning which the court desires the instruction and advice of the Supreme Court of the United States.

Kessler, a citizen of Indiana, prior to 1898 had built up an extensive business in the manufacture and sale of electric cigar-lighters and had customers throughout the United States. Eldred, a citizen of Illinois and an inhabitant of the Northern District, was the owner of patent no. 492913, issued to Chambers on March 7, 1893, for an electric lamp-lighter. Eldred was a competitor of Kessler's and manufactured a similar form of lighter (entirely dissimilar from that described in the Chambers patent), so that it was not a matter of much importance to customers which lighter they bought. In 1898 Eldred began a suit against Kessler in the District of Indiana for infringement of the Chambers patent. The bill alleged that Kessler's manufacture and sale of the Kessler lighter infringed all the claims. The answer denied that the Kessler lighter infringed any of the Chambers claims. On final hearing the Circuit Court found for Kessler on the issue of non-infringement, and dis-
2 missed the bill. That decree was affirmed in 1900 by the Circuit Court of Appeals for the Seventh Circuit. Eldred *v.* Kessler, 106 Fed. 509.

Subsequently Eldred brought suit on the same patent in the Northern District of New York against Kirkland, who was selling a similar lighter, but not of Kessler's make. The Circuit Court found for Kirkland on the issue of non-infringement, and dismissed the bill. The Circuit Court of Appeals for the Second Circuit reversed that decree and held the Kirkland lighter to be an infringement. Eldred *v.* Kirkland, 130 Fed. 342.

In June, 1904, Eldred filed a bill for infringement of the same patent in the Western District of New York against Breitwieser, user of Kessler lighters which were identical with those held in Eldred *v.* Kessler to be no infringement of the Chambers patent. Many of Kessler's customers were intimidated by the Breitwieser suit so that they ceased to send in further orders for lighters and refused to pay their accounts for lighters already sold and delivered to them. Kessler assumed the defense of the Breitwieser suit and will be compelled in the proper discharge of his duty to his customers to assume the

burden and expense of all suits which may be brought by Eldred against other customers. In this state of affairs, Kessler, a citizen of Indiana, in July, 1904, filed a bill against Eldred in the Circuit Court for the Northern District of Illinois, the state and district of Eldred's citizenship and residence, to enjoin Eldred from prosecuting any suit in any court of the United States against anyone for alleged infringement of the Chambers patent by purchase, use or sale of any electric cigar-lighter manufactured by Kessler and identical with the lighter in evidence before the Circuit Court for the District of Indiana and the Circuit Court of Appeals for the Seventh Circuit in the trial and adjudication of the suit of Eldred against Kessler. From an adverse decree by the Circuit Court, Kessler perfected an appeal to this court.

Upon the foregoing facts the questions of law concerning which this court desires the instruction and advice of the Supreme Court are these:

First. Did the decree in Kessler's favor, rendered by the Circuit Court for the District of Indiana in the suit of Eldred against Kessler, have the effect of entitling Kessler to continue the business of manufacturing and selling throughout the United States the same lighter he had theretofore been manufacturing and selling, without molestation by Eldred through the Chambers patent?

3 Second. Did the decree mentioned in the first question have the effect of making a suit by Eldred against any customer of Kessler's for alleged infringement of the Chambers patent by use or sale of Kessler's lighters a wrongful interference by Eldred with Kessler's business?

Third. Did Kessler's assumption of the defense of Eldred's suit against Breitwieser deprive Kessler of the right, if that right would otherwise exist, of proceeding against Eldred in the state and district of his citizenship and residence for wrongfully interfering with Kessler's business?

Fourth. If Eldred's acts were wrongful, had Kessler an adequate remedy at law?

These questions the court this day orders certified and submitted to the Supreme Court of the United States.

PETER S. GROSSCUP,
FRANCIS E. BAKER,
WM. H. SEAMAN,
Circuit Judges.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

Chicago, January 2, 1906.

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